

GOVERNMENT PROPOSED JURY INST. NO. 202Offense Charged

The indictment sets forth \_\_\_\_\_ counts or charges.

Count I charges that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, in connection with [*an offer of compromise, or a compromise, or a closing statement*] relating to his [her] liability for [*type of tax*] taxes due and owing by him [her] to the United States of America for the calendar year(s) \_\_\_\_\_, did willfully *conceal from* [*Specify particular officer, with job title*] and all other proper officers and employees of the United States, [*Describe property belonging to taxpayer or other person liable for the tax*] or did willfully [*"receive" "withhold" "destroy" "mutilate" or "falsify," Describe book, document or record involved*].

GOVERNMENT PROPOSED JURY INST. NO. 203

Statute Defining Offense

Section 7206(5) of the Internal Revenue Code provides, in part, as follows:

Any person who -- \* \* \* [i]n connection with any compromise \* \* \*, or offer of such compromise, or in connection with any closing agreement \* \* \*, or offer to enter into any such agreement, willfully \* \* \* conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or \* \* \* [r]eceives, withholds, destroys, mutilates, or falsifies any book, document, or record, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax; shall be guilty [*of an offense against the laws of the United States*].

GOVERNMENT PROPOSED JURY INST. NO. 204

Essential Elements

To establish the offense charged in the indictment, the government must prove the following elements beyond a reasonable doubt:

***First:*** in connection with a closing agreement, or offer to enter into a closing agreement, in respect of an internal revenue tax, as provided for in 26 U.S.C. § 7121; or in connection with a compromise, or an offer of compromise, of a civil or criminal case arising under the internal revenue laws, as provided for in 26 U.S.C. § 7122;

***Second:*** the defendant concealed from an employee of the United States any property belonging to the estate of a taxpayer or other person liable for the tax, or the defendant withheld, falsified, or destroyed records, or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax; and

***Third:*** the defendant acted willfully.

GOVERNMENT PROPOSED JURY INST. NO. 205

Willfulness

To find the defendant guilty of violating Section 7206(5), you must not only find that he [she] did the acts complained of and of which he [she] stands charged, but you must also find that the acts were done willfully by him [her].

The word "willfully," as used in this statute, means a voluntary, intentional violation of a known legal duty. In other words, the defendant must have acted voluntarily and intentionally and with the specific intent to do something he [she] knew the law prohibits, that is to say, with intent either to disobey or to disregard the law.

In determining the issue of willfulness, you are entitled to consider anything done or omitted to be done by the defendant and all facts and circumstances in evidence that may aid in the determination of his [her] state of mind. It is obviously impossible to ascertain or prove directly the operations of the defendant's mind; but a careful and intelligent consideration of the facts and circumstances shown by the evidence in any case may enable one to infer what another's intentions were in doing or not doing things. With the knowledge of definite acts, we may draw definite logical conclusions.

We are, in our daily affairs, continuously called upon to decide from the acts of others what their intentions or purposes are, and experience has taught us that frequently actions speak more clearly than spoken or written words. To this extent, you must rely in part on circumstantial evidence in determining the guilt or innocence of the defendant.

In this regard, there are certain matters that you may consider as pointing to willfulness, if you find such matters to exist in this case. By way of illustration only, willfulness may be inferred from conduct such as *[set forth examples appropriate under the evidence, e.g., making false entries or alteration, or false invoices or documents, concealment*

*of assets or covering up sources of income, handling one's affairs to avoid making the records usual in transactions of the kind]* and any conduct the likely effect of which would be to mislead or to conceal.

I give you these instances simply to illustrate the type of conduct you may consider in determining the issue of willfulness. I do not by this instruction mean to imply that the defendant did engage in any such conduct. It is for you as the trier of the facts to make this determination as to whether the defendant did or did not.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1992), Section 17.07 (modified and supplemented)

Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.20 (modified)

*Pattern Jury Instructions*, Fifth Circuit (1990 Ed.), Section 2.88 (Note)

*Federal Criminal Jury Instructions of the Seventh Circuit* (1980 Ed.), Section 6.03 (modified)

*Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit* (1992 Ed.), Section 7.02 (Comment)

*Manual of Model Jury Instructions for the Ninth Circuit* (1992 Ed.), Section 5.05 (Comment)

*Pattern Jury Instructions, Criminal Cases*, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 9.1, p. 22 (modified)

*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Pomponio*, 429 U.S. 10, 12 (1976)

*United States v. Bishop*, 412 U.S. 346, 360 (1973)

*Spies v. United States*, 317 U.S. 492, 499 (1943)

*United States v. Ashfield*, 735 F.2d 101, 105 (3d Cir.), cert. denied sub nom., *Storm v. United States*, 469 U.S. 858 (1984)

*United States v. Conforte*, 624 F.2d 869, 875 (9th Cir. 1980), cert. denied, 449 U.S. 1012 (1980)

*United States v. Ramsdell*, 450 F.2d 130, 133-134 (10th Cir. 1971)

*United States v. Spinelli*, 443 F.2d 2, 3 (9th Cir. 1971)

**COMMENTS**

**1** It is not necessary to define the term "willfully" in a tax case in terms of "bad purpose" or "evil motive." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). *See also* Section 8.06[1], *supra*.

**2** Willfulness has the same meaning in the felony and misdemeanor sections of the Internal Revenue Code. *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

**3** *See also* instructions on willfulness set forth as a part of the instructions on 26 U.S.C. § 7201, *supra*.